

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MAYS PRINTING COMPANY, INC.

and

Case 7-CA-52247

LOCAL 2/289-M, GRAPHIC COMMUNICATIONS
CONFERENCE, DISTRICT COUNCIL 3, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Patricia Fedewa, Esq., for the General Counsel.
Michael J. Robinson, Vice President, Information Technologies,
Mays Printing Company, Inc., Detroit, Michigan, Pro Se, for the Respondent.

DECISION

Statement of the Case

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Detroit, Michigan, on March 22, 2010. The Union filed the original charge on July 20, 2009. The General Counsel issued the complaint on September 19, 2009.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed by the General Counsel and letter submitted by Respondent, I make the following

Findings of Fact

I. Jurisdiction

Respondent, Mays Printing Company, Inc., is in the printing business in Detroit, Michigan. During calendar year 2008, Respondent had gross receipts in excess of \$500,000 and purchased and received natural gas valued in excess of \$10,000 from DTE Energy, whose natural gas originates outside of the State of Michigan. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The General Counsel alleges that on July 9, 2009, Respondent laid off employee Jeffrey Krejci in retaliation for his activities as union steward in violation of Section 8(a)(3) and (1) of the Act. He also alleges that Respondent permanently closed all or part of its camera department without providing the Union an opportunity to bargain over the closure or its effects in violation of Section 8(a)(5) and (1).

Respondent hired Jeffrey Krejci in April 2005. On his third day as Respondent's employee, Krejci was arrested for driving under the influence of alcohol and missed work. When he showed up for work on the fourth day, Krejci told his supervisor, production foreman

James McTere that he had not been at work the day previously because he had been arrested for DUI.

5 Krejci was the only permanent employee in Respondent's stripping or "film and plates" department. Respondent's graphic designers, usually Kenon Cross and Paul Altese, performed typesetting work on computers. Then they sent the work that could not be processed digitally to Krejci. He reviewed their work and then processed it into film which he used to produce plates for a printing press. After making proofs which are reviewed by Respondent's customers, Krejci transmitted the plates to press operators who produced Respondent's books, magazines,
10 posters, business cards, etc.

The majority of Respondent's work, such as funeral programs, is run on a digital press, which does not require any stripping work. However, not all Respondent's products, particularly large products and work requiring many copies, can be produced digitally.

15 The Union, Local 2/289, Graphic Communications Conference, has been the authorized collective bargaining representative of Respondent's designers, strippers, press employees, bindery employees, operators and production employees since at least November 2006. At all times material to this case, Jeffrey Krejci was the Union's steward at Respondent's facility.

20 Respondent and the Union have been parties to two collective bargaining agreements, the latest of which is effective from November 2, 2007 until October 31, 2010. Article 42 of this agreement provides for dues check-off and transmission of dues by Respondent to the Union.

25 Sometime in the spring of 2009 or earlier, the Union filed unfair labor practice charges against Respondent alleging that Respondent unilaterally terminated the health insurance benefits provided in the parties' collective bargaining agreement, and that Respondent unilaterally reduced employees' wages. The General Counsel filed a complaint based on this charge. Respondent failed to file an Answer. Therefore, the Board issued a default judgment
30 which was enforced by the United States Court of Appeals for the Sixth Circuit.

In early to mid-2009, production foreman James McTere told Krejci that Company President James Mays was upset about the charges and wanted Krejci fired. Soon afterwards, Krejci found out that Earl "Butch" Chambliss, a cousin of James Mays, who was not a
35 bargaining unit member, was performing work on Respondent's typesetting computers. Krejci reported this to Daniel Courtney, the Union's Vice President/Staff Representative. Courtney called Mays who told him Chambliss would not work on the typesetting computers any more.

40 Shortly thereafter, an employee informed Krejci that Chambliss was working on the company computers again. Krejci immediately called Courtney. Courtney called James Mays and told him that he wanted to meet with him.

Mays, Krejci and Courtney met on June 29, 2009, at the union office in Warren, Michigan. Mays presented a letter from Chambliss to the effect that Chambliss would not
45 perform any more work on Respondent's computers. Courtney also raised an issue regarding Respondent's remittance of union dues. He informed Mays that until Courtney determined Respondent's status regarding the remittance of union dues, it was no longer authorized to put a small union insignia, commonly called a "union bug," on his products. ¹ Without this bug

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¹ Two "union bugs" appear at the bottom of G.C. Exhibit 7.

Respondent could not produce a number of different types of documents, such as posters for City of Detroit elections.

Courtney spoke with Mays again on June 30. He informed Mays that Respondent owed the Union \$3,200 in dues. Courtney offered Mays a payment plan of \$200 a week and told Mays that if he complied with the payment plan, he could use the "union bug." Soon afterwards, however, Krejci informed Courtney that Chambliss was again working on the typesetting computers. Courtney called Mays and told him he was no longer authorized to use the "union bug." Mays told Courtney that if that was the case, he was going to have to lay off some employees.²

On July 1, 2009 Respondent gave Krejci and graphic designers Paul Altese and Kenon Cross letters informing them they were to be laid off effective July 9. Respondent also faxed the letter to Courtney.

On or about July 7, Press Operator Michael Camilleri and Production Foreman James McTere told Krejci that Mays had told them that if Krejci resigned as union steward there would not be any lay-offs. Thursday, July 9, was the last day Jeffrey Krejci worked for Respondent. On Monday, July 13, Respondent recalled Cross and Altese to work.

On or about July 15, Daniel Courtney spoke with K. B. Stallworth, who had been on Respondent's committee negotiating with the Union for a collective bargaining agreement in 2007. Stallworth had also negotiated on Respondent's behalf regarding grievances. Stallworth informed Courtney that Respondent was shutting down its stripping department. Courtney told Stallworth that Respondent had to bargain with the Union over the effects of the shutdown. On about July 20, Courtney spoke with James Mays and informed him that if he was shutting down the stripping department, Respondent must engage in effects bargaining with the Union.

Respondent apparently operated the stripping department for some time after July 15. The work in that department diminished and ultimately ceased due largely to Respondent's loss of the ability to use the union bug.

Analysis re: discriminatory discharge/lay-off of Jeffrey Krejci

In order to establish a violation of Section 8(a)(3) and (1), the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983) ; *American Gardens Management Co.*, 338 NLRB 644 (2002).

In the instant case, I conclude that Respondent laid off Jeffrey Krejci in retaliation for his union activities, specifically his activity as union steward in attempting to get Respondent to comply with its collective bargaining agreement. Thus, I find that Respondent violated Section 8(a)(3) and (1) in laying off Krejci and refusing to recall him.

² Respondent had to subcontract some work already in-house to companies authorized to utilize the "union bug."

G.C. Exhibit 17, a statement given to the Board by Michael Camilleri on September 8, 2008 establishes the degree of Respondent's animus towards Jeffrey Krejci's union activities. Camilleri apparently gave this statement during an investigation of earlier unfair labor practice charges or to the Union. Camilleri stated that he overheard a conversation between

5 Respondent's President James Mays and employee Louise Rising. Rising asked Mays what she should do about Krejci calling her and discussing her work situation with her. Mays advised Rising to file or threaten to file a sexual harassment charge against Krejci. There is absolutely no evidence that would suggest that Rising would have had any reason to file a sexual harassment complaint against Krejci.

10 Moreover, the record establishes that Respondent laid off Krejci in direct response to the Union's removal of its authorization to use the union bug. That action was taken by the Union because Krejci had informed the Union Staff Representative about "Butch" Chambliss performing unit work in violation of the parties collective bargaining agreement and

15 Respondent's failure to abide by the agreement with regard to the remittance of union dues.

Having found that the General Counsel met his initial burden under *Wright Line*, I also conclude that Respondent did not meet its rebuttal burden of showing that it would have laid off or discharged Krejci in the absence of his union activity, *Kieft Bros, Inc.*, 355 NLRB No. 19 (March 25, 2010). Respondent merely made a bald assertion that this was so; it introduced no evidence to support this contention.

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Failure to bargain over closure of the stripping department

25 The Union filed a grievance on July 13 regarding the lay-off of Krejci. James Mays responded by sending Daniel Courtney a letter, G.C. Exh. 10, which denied that Krejci's lay-off was discriminatory. He claimed that he had shut down the film, stripping and plate department for business reasons. Courtney called Mays at a later date in July and told him that he had to bargain over the effects of shutting down the department. This is the factual basis for the

30 allegations in Complaint paragraphs 12-15 and 17.

For some time after Krejci's lay-off, Respondent continued to do a significant amount of stripping or film work. This was usually done by Martin Griffin, who otherwise worked in the bindery department. However, over time the amount of film work decreased and by the time of the instant hearing virtually no film/stripping work was being performed by Respondent.

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This decrease in film work may be due in large part to the Union's revocation of authorization to use the "union bug." James Mays has asked the Union to provide Respondent with a stripper other than Krejci, but the Union has refused to do so. Mays made it clear at the hearing that if he were to regain the authorization to use the union bug, he would reactivate the film/stripping department.

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In light of the above, I conclude that Respondent has not permanently closed down the stripping department. Thus, this decision did not involve a change in the scope and direction of Respondent's enterprise. Therefore, Respondent was obligated to provide the Union an opportunity to bargain over the decision to temporarily shutdown its stripping department and the effects of that decision, *Rahco, Inc.*, 265 NLRB 235, 255-56 (1982). However, since the Union only requested bargaining over the effects of the shutdown, Respondent violated Section 8(a)(5) only in its failure to respond to the Union's request.

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Respondent's objections to reinstatement on the basis of Krejci's alleged misconduct

5 About a week after his last day at work, Krejci called Michael Camilleri, a press operator, who had been the Union's assistant shop steward. Krejci asked Camilleri if any work was being done in the stripping department. Camilleri, who became the production supervisor a month later upon the resignation of James McTere, refused to give Krejci any information about what was going on at Respondent's facility. Krejci told Camilleri that if he would not give him such information, Krejci would call the Michigan Occupational Safety and Health Administration (MIOOSH) about the guards on Respondent's presses.

10 Krejci called MIOSHA, which apparently called Respondent about the complaint and then did an on-site inspection. It is not clear how long after the agency's telephone call, the inspection took place. However, Camilleri testified the inspection took place in about September 2009. In February 2010, MIOOSH did a second inspection and found no OSHA violations. It is not clear from this record whether MIOSHA issued any citations as the result of the first inspection or why it conducted the follow-up inspection.³ Thus, there is no basis for concluding that Krejci called MIOSHA without a good faith belief that the guards on Respondent's presses were not in compliance with OSHA regulations.

20 Respondent also contends that it need not reinstate Krejci because of his DUI conviction in 2005. However, I credit Krejci's uncontradicted testimony that Respondent, through production manager James McTere, was aware of this conviction when it occurred and took no action with regard to this conviction for several years.⁴

25 When an employee is unlawfully discharged, reinstatement and backpay are appropriate remedies unless the employer can show subsequent conduct, or discovery of conduct, that would have resulted in a lawful discharge. Under well established Board precedent, if an employer establishes that an employee engaged in misconduct for which the employer would have discharged any employee, reinstatement is not ordered and backpay is terminated on the date that the employer first acquired knowledge of the misconduct, *Berkshire Farm Center*, 333 NLRB 367 (2001); *Marshall Durbin Poultry Co.*, 310 NLRB 68, 70 (1993); *John Cuneo, Inc.*, 298 NLRB 856-857 (1990).

35 Respondent has not shown that it would have discharged any employee for a DUI conviction. Moreover, had it discharged Krejci for calling MIOSHA, that discharge may have violated Section 11(c) of the Occupational Safety and Health Act, the OSH Act's anti-discrimination provisions.

40 Finally, Respondent argues that there is no job at the facility for Krejci. However, that is a direct result of Respondent's violation of Section 8(a)(3) and its failure to comply with the

45 ³ Camilleri testified that MIOSHA found Respondent in compliance during the first inspection and that the second took place because the first inspector's boss had to look the guards on the press. Due to Respondent's failure to introduce any documentation regarding the first inspection, I decline to credit Camilleri's self-serving testimony regarding the first inspection. By the time of his testimony at the instant hearing, Camilleri was an agent of Respondent and most likely a supervisor pursuant to Section 2(13) of the Act. He acted as Respondent's representative at the hearing.

50 ⁴ Krejci's testimony is inherently credible on this issue. He testified that he was not able to come to work at Respondent's facility on his third day on the job. Thus, he had to explain his absence to McTere.

terms of the collective bargaining agreement. I leave it to compliance to determine whether or not there would be a job in which to reinstate Krejci had Respondent not violated the Act and failed to comply with the collective bargaining agreement.

5 *Alleged Johnnie's Poultry Violations*

The Board in *Johnnie's Poultry*, 146 NLRB 770 (1964) specified the following safeguards regarding employer interviews of employees in preparation for trial in an unfair labor practice proceeding:

10 [T]he employer must communicate to the employee the purpose of the questioning, assure him that no reprisal will take place, and obtain his participation on a voluntary basis; the questioning must occur in a context free from employer hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities
15 of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees.

146 NLRB at 775.

20 Three days before the start of the hearing in this matter, Respondent solicited affidavits from employees Kenan Cross and Paul Altese without telling either that their willingness to provide an affidavit was strictly voluntary and that if they chose not to do so, there would be no reprisals. Thus, I find that Respondent violated Section 8(a)(1) in soliciting these affidavits
25 without providing the information required by *Johnnie's Poultry*.

Remedy

30 Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

35 The Respondent having discriminatorily discharged Jeffrey Krejci, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

40 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

45 The Respondent, Mays Printing Company, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

50 ⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting Local 2/289-M, Graphic Communications Conference of the International Brotherhood of Teamsters, or any other union.

(b) Questioning employees about pending unfair labor practices without adhering to the following safeguards:

Communicating to the employee the purpose of the questioning, assuring him or her that no reprisal will take place, and obtain his or her participation on a voluntary basis; the questioning must occur in a context free from employer hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees.

(c) Refusing to bargain with the Union over the effects of a temporary shutdown of the stripping department.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Jeffrey Krejci full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Jeffrey Krejci whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge or lay-off, and within 3 days thereafter notify the Jeffrey Krejci in writing that this has been done and that the discharge/lay-off will not be used against him in any way.

(d) Bargain over the effects of any decision to temporarily shut down its stripping department.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Detroit, Michigan facility, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 2009.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., May 11, 2010.

Arthur J. Amchan
Administrative Law Judge

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Local 2/289-M, Graphic Communications Conference of the International Brotherhood of Teamsters or any other union.

WE WILL NOT question you about pending unfair labor practice charges without adhering to the following safeguards:

Communicating to the employee the purpose of the questioning, assuring him or her that no reprisal will take place, and obtain his or her participation on a voluntary basis; the questioning must occur in a context free from employer hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees.

WE WILL NOT temporarily shut down any segment of our operations with giving the Union an opportunity to bargain over the effects of such a decision.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Jeffrey Krejci full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Jeffrey Krejci whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge/lay-off of Jeffrey Krejci, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge/lay-off will not be used against him in any way.

WE WILL, upon request, bargain collectively and in good faith with the Union as the exclusive collective bargaining representative of unit employees with respect to wages, hours and other terms and conditions of employment.

MAYS PRINTING COMPANY, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

477 Michigan Avenue, Federal Building, Room 300

Detroit, Michigan 48226-2569

Hours: 8:15 a.m. to 4:45 p.m.

313-226-3200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 313-226-3244.